



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-D-0611]

Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price

Competition and Innovation Act of 2009; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled “Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009.” This guidance is intended to provide answers to common questions from sponsors interested in developing proposed biosimilar products, biologics license application (BLA) holders, and other interested parties regarding FDA’s interpretation of the Biologics Price Competition and Innovation Act of 2009 (BPCI Act). This guidance finalizes several questions and answers (Q&As) from the draft guidance entitled “Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009” issued February 15, 2012.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993; or Office

of Communication, Outreach and Development (HFM-40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance document.

Submit electronic comments on the guidance to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6340, Silver Spring, MD 20993-0002, 301-796-1042; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA is announcing the availability of a guidance for industry entitled “Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009.” This guidance provides answers to common questions from sponsors interested in developing proposed biosimilar products, BLA holders, and other interested parties regarding FDA’s interpretation of the BPCI Act.

The BPCI Act, enacted as part of the Patient Protection and Affordable Care Act (Pub. L. 111-148) on March 23, 2010, created an abbreviated licensure pathway under section 351(k) of the Public Health Service Act (PHS Act) (42 U.S.C. 262(k)) for biological products

demonstrated to be biosimilar to, or interchangeable with, an FDA-licensed reference product.

This guidance describes FDA's current interpretation of certain statutory requirements added by the BPCI Act and includes Q&As in the following categories:

- Biosimilarity or Interchangeability
- Provisions Related to Requirement to Submit a BLA for a "Biological Product"
- Exclusivity

The Q&A format is intended to promote transparency and facilitate development programs for proposed biosimilar products by addressing questions that may arise in the early stages of development. In addition, these Q&As respond to questions the Agency has received from prospective BLA and new drug application (NDA) applicants regarding the appropriate statutory authority under which certain products will be regulated.

In the Federal Register of February 15, 2012 (77 FR 8885), FDA published a notice announcing the availability of a draft guidance entitled "Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009." Although interested parties can comment on any guidance at any time, to ensure that the Agency considered comments on the draft guidance before beginning work on the final version of the guidance, FDA requested that interested parties submit comments by April 16, 2012. FDA's consideration of these comments, among other things, is reflected in a revised draft guidance and this final guidance. This guidance describes the status of the draft guidance Q&As provided in Revision 1 of the draft guidance entitled "Biosimilars: Additional Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009," and the status of the final guidance Q&As that are included in this guidance. FDA intends to update these guidances to include additional Q&As as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on "Biosimilars: Questions and Answers Regarding Implementation of the Biologics Price Competition and Innovation Act of 2009." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit either electronic comments regarding this document to <http://www.regulations.gov> or written comments to the Division of Dockets Management (see ADDRESSES). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

## III. The Paperwork Reduction Act of 1995

This guidance refers to information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520). The submission of an investigational new drug application is covered under 21 CFR part 312 and approved under OMB control number 0910-0014. The submission of an NDA is covered under 21 CFR 314.50 and approved under OMB control number 0910-0001. The submission of a BLA under section 351(a) of the PHS Act is covered under part 601 (21 CFR part 601) and approved under OMB control number 0910-0338. The submission of a BLA under section 351(k) of the PHS Act is covered under part 601 and approved under OMB control number 0910-0719. In the Federal Register of April 1, 2013 (78 FR 19492), FDA published a

notice announcing the availability of a draft guidance for industry entitled “Formal Meetings Between the FDA and Biosimilar Biological Product Sponsors or Applicants.” The notice contained an analysis of the information collection burden resulting from the draft guidance, and will be submitted to OMB for approval before issuance of the final guidance.

#### IV. Electronic Access

Persons with access to the Internet may obtain the document at

<http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>,  
<http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm>, or <http://www.regulations.gov>.

Dated: April 24, 2015.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2015-10064 Filed: 4/29/2015 08:45 am; Publication Date: 4/30/2015]